



Signed MOU-Rec'd 5/10/94

MEMORANDUM OF UNDERSTANDING  
between the  
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT  
and  
NOAA DAMAGE ASSESSMENT AND RESTORATION PROGRAM  
REGARDING DAMAGE ASSESSMENT AND RESTORATION ACTIVITIES  
for  
NATIONAL MARINE SANCTUARIES

I. PURPOSE AND SCOPE

This document provides guidance for the coordination and financial support of damage assessment and restoration activities for the destruction, loss or injury, or threat thereof, to National Marine Sanctuary resources pursuant to section 312 of the National Marine Sanctuaries Act (NMSA), and other applicable federal laws (i.e. Oil Pollution Act, CERCLA). This MOU sets forth:

- general roles and responsibilities;
- specific operational procedures for the interaction between the Office of Ocean and Coastal Resource Management (OCRM), Sanctuaries and Reserves Division (SRD) and NOAA's Damage Assessment and Restoration Program (DARP); and,
- general program development.

This MOU covers SRD, the Damage Assessment Center (DAC) in the National Ocean Service, Office of Ocean Resources Conservation and Assessment, the Restoration Center<sup>1</sup> (RC) in the National Marine Fisheries Service (NMFS), Office of Protected Resources and that part of the NOAA Office of General Counsel assigned to the damage assessment/natural resource trustee area (DAC/GC). Coordination between SRD and other NOAA elements of emergency response activities to oil and other spills affecting Sanctuary resources will be covered under separate agreement(s).

II. REFERENCES AND AUTHORITY

This agreement applies to damage assessment and restoration activities undertaken by NOAA in response to incidents that involve destruction, loss or injury, or threat thereof, to sanctuary resources pursuant to Section 312 of the National Marine Sanctuaries Act (NMSA) (16 USC 1431 et seq.); and other applicable federal laws (i.e. Oil Pollution Act, CERCLA).

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<sup>1</sup> The Restoration Center includes all NMFS field and lab staff working under the auspices of the RC.

### III. SRD and DARP ROLES AND RESPONSIBILITIES

#### A. DIVISION OF RESPONSIBILITIES

1. Oil Spills and Releases of Hazardous Materials. For incidents involving the release or potential release of oil or hazardous materials that injure, destroy or cause the loss of sanctuary resources, DARP will assume lead responsibility within NOAA for conducting damage assessment, litigation and restoration activities. SRD may request a co-lead role. In conducting damage assessment and restoration activities, DARP will coordinate with and employ the expertise of NMS staff, managers and experts, as appropriate.

2. Physical Injury. For incidents involving physical injury, destruction or loss or threat thereof to sanctuary resources, SRD will assume lead responsibility within NOAA for conducting or coordinating with DARP: emergency response; injury assessment, and restoration planning and implementation. Technical, administrative and legal support will be provided by DARP, under the provisions of this MOU, as appropriate.

3. Spills and Physical Injury. For incidents involving both the release or potential release of oil or hazardous materials and physical injury to sanctuary resources, DARP will assume lead responsibility as described in III.A.1.

#### B. GENERAL GUIDANCE

1. Consistency with DARP. All NMSA damage assessment and restoration activities undertaken will be consistent with broader DARP policies and goals.

2. Case Selection. If, after a preliminary evaluation, the DARP/SRD case team determines that a case meets the DARP criteria for case selection, SRD may propose the case for acceptance by the DARP Board of Directors. Upon acceptance by DARP, technical, administrative and legal support will be provided under the terms of this agreement for all phases of the case through the implementation of restoration.

3. Legal Support. Legal support will be provided by those attorneys within the NOAA Office of General Counsel assigned to the damage assessment/natural resource trustee area (DAC/GC). Major decisions concerning terms of settlement or filing of a legal action will be developed by DAC/GC in coordination with SRD, and will be approved by the Chief of SRD and the DARP Board of Directors.

4. Case management. Natural resource damage actions under the NMSA require the coordination of efforts and resources among numerous components of DARP and SRD. For all NMSA cases, the SRD Natural Resource Damage Coordinator will serve as the primary point of contact within SRD for DARP and other cotrustees. This person will be responsible for coordinating activities in support of NMSA damage actions and representing SRD's interests during: emergency response; injury assessment; case selection; case team formation; meetings; travel; development of case strategies; and restoration planning and implementation. These efforts will be coordinated with DARP. The SRD NRD Coordinator will respond in a timely manner to requests from case attorneys and other DARP elements for information, work products, or funds.

#### C. PROGRAM DEVELOPMENT

1. Long-term Staff and Funding Plan. To the extent possible, SRD and DARP will cooperate to develop a long-term NRDA plan to ensure that adequate staff and financial resources are secured by all program components (SRD and DARP) to adequately support future NMSA damage actions.

2. Programmatic Functions. To the extent possible, SRD and DARP will cooperate to develop and strengthen long-term programmatic capabilities in critical NMSA areas such as: injury assessment; damage assessment; restoration; and public education/outreach efforts.

3. Biannual Program Planning Document. SRD, in coordination with DARP, will develop, and biannually revise, an SRD NRDA Program Planning Document (similar to DARP's *Status Report and Funding Request*) outlining upcoming specific case support needs as well as broader programmatic development issues involving DARP staff or functions. This document will be used by both SRD and DARP to plan annual allocations of staffing, financial and contracting resources in support of NMSA cases.

#### IV. ACTIVITIES COVERED FINANCIALLY BY THIS AGREEMENT

The Sanctuaries and Reserves Division agrees to provide advance funding to DARP for scientific, economic, legal and administrative support in the development of natural resource damage claims, and implementation of restoration for injury, loss or destruction of sanctuary resources pursuant to Section 312 of the NMSA. This agreement does not cover the obligation of SRD's funds for other than necessary and reasonable costs (i.e. labor, benefits, travel) associated with technical, administrative or legal support services provided at SRD's request by DARP under section III.A.2.,

or by mutual agreement under section III.A.1 and 3. Separate funding requests must be submitted to SRD's NRDA Coordinator for technical support beyond the scope of this agreement.

Pursuant to this agreement, SRD will provide funding for DARP personnel involved in any of the following activities:

- ° emergency response to incidents that threaten to injure or involve injury, destruction or loss of sanctuary resources;
- ° preliminary assessment of the injury, loss or destruction of sanctuary resources and restoration potential;
- ° assessment of injury to, destruction or loss of sanctuary resources;
- ° economic valuation of injured, destroyed or lost sanctuary resources;
- ° restoration planning and implementation (including monitoring) efforts for NMSA cases pursued by SRD and DARP;
- ° legal activities including case development, settlement or litigation;
- ° administrative support for ongoing cases (e.g., contract management, record-keeping, documentation of DARP costs for the purpose of cost recovery) for NMSA cases;
- ° general support and guidance for SRD efforts to ensure consistency with the overall Damage Assessment and Restoration Program (DARP) policies and financial procedures.

#### V. PERIOD

A. Period This agreement shall cover the time period from October 1, 1993 through December 31, 1995 (retroactively).

B. Extension This agreement may be extended at any time by mutual consent of OCRM and DARP.

#### VI. MODIFICATION/CANCELLATION PROVISION

A. Amendments This agreement may be amended at any time to include additional provisions by mutual consent of OCRM and DARP.

B. Termination This agreement may be terminated by either party, in writing and with 30 days notice to the other party, at any time prior to its expiration. At the time of the notice, all ongoing cases and related activities will be

reviewed by the Office of General Counsel (OGC) and the US Department of Justice (DOJ), as appropriate, to determine the potential liability of terminating case support or damage assessment activity. Funding will be provided by SRD to complete those tasks, as identified by OGC and/or DOJ, necessary to avoid jeopardizing NOAA's trustee programs. In the event that the request for termination of this MOU stems from a disagreement between SRD and DARP over the pursuit of a specific case(s), future funding by SRD will be determined through the conflict resolution mechanism outlined in Section VII.

## VII. OTHER PROVISIONS

A. Emergency Notification DARP shall notify SRD of all incidents involving the release or potential release of oil or hazardous materials that may affect sanctuary resources. Likewise, SRD shall notify DARP of all incidents that threaten to or involve injury, destruction or loss of sanctuary resources.

B. Funding SRD shall provide to DARP funds to support activities covered by this agreement. Exact amounts to be made available to DAC, RC and DAC/GC will be specified in an accompanying memorandum of transfer. Should these funds be exhausted by DARP prior to the termination or renewal of this agreement, SRD and DARP will negotiate the terms of subsequent allocation(s).

C. Prior Approval DARP and SRD will establish specific staffing levels and general work plans for each NMSA case. Any changes in DARP staffing commitments that would result in additional costs for SRD must be approved in advance by SRD. DARP personnel must request from SRD, through memorandum or electronic mail messages, prior approval for all travel or non-salary expenses related to NMSA damage actions and/or restoration efforts. SRD will review the requests in a timely fashion and approval will be communicated to DARP through memorandum or electronic mail messages. If SRD does not provide a response to a request for travel funds within three working days from the receipt of the request, DARP will assume approval. In emergency situations that preclude sufficient written notice, verbal approval may be given by SRD, followed by written documentation of the authorization.

D. Task Numbers SRD shall be responsible for requesting the establishment of task numbers for new natural resource damage actions and for providing that information to DARP.

E. Labor Reporting DARP shall provide reports based on FIMA data regarding covered expenses on a quarterly basis, with copies of obligating documents (time sheets are excluded

unless specifically requested).

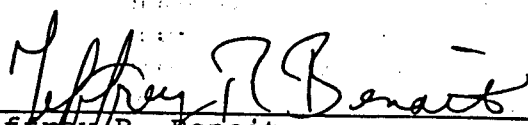
F. Accounting DARP shall provide to SRD on a quarterly basis, financial printouts listing all transactions charged to SRD funds. DARP will provide all supporting documentation needed to respond to formal requests for information regarding costs incurred by DARP in developing potential or actual damage actions (e.g., audits, discovery requests, etc.).

G. Overhead DARP shall not charge SRD for space or labor costs, unless such charges are based on actual costs incurred by DARP.

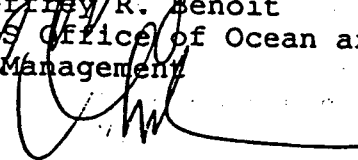
H. Alternative Funding In the event that either SRD or DARP seek NOAA or outside funding for NRDA-related activities involving sanctuaries, copies of the proposals will be sent to the counterpart organization for comment.

I. Conflict Resolution Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on the interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to the DARP Board of Directors and the Director of OCRM. If the disagreement is not resolved, the issue will then be forwarded to the NOAA General Counsel and the Assistant Administrators for NOS and NMFS.


VIII. SIGNATURE OF EACH PARTY

  
Jeffrey R. Benoit  
NOS Office of Ocean and Coastal Resource  
Management

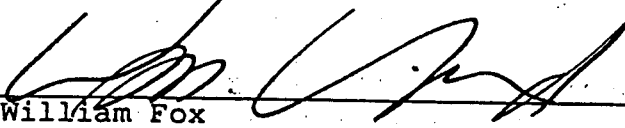
4/21/94  
Date

  
Craig R. O'Connor  
NOAA Office of General Counsel

4/28/94  
Date

  
Charles N. Ehler  
NOS Office of Ocean Resource Conservation  
and Assessment

4/28/94  
Date

  
William Fox  
NMFS Office of Protected Resources

5-9-94  
Date